IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/02/2004

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION NO.17506 OF 1997

T.R.Varadarajan ... Petitioner

-Vs-

The Regional Transport Officer,
Virudhunagar. ... Respondent

Writ Petition under Article 226 of the Constitution of India
praying for issuance of a writ of certiorari as stated therein.

!For Petitioner .. Mr.C.R.Krishnamurthy

^For Respondent .. Mr.R.Vijaya Kumar,
Addl.Govt.Pleader.

:ORDER

The petitioner has sought for issuance of writ of certiorari to quash the order of the respondent in his Memo R.No.27084/A4/90, dated 07 .10.1996.

2. The petitioner is the owner of goods vehicle bearing Registration No. TDR 2629 covered by the Goods Carriage Permit valid in the State of Tamil Nadu and it expired on 26.11.1999. According to the petitioner, the vehicle was registered by the Assistant Registering Authority, Ramanathapuram at Madurai, on 06.02.1985 and the maximum laden weight was 26400 kgs., as per the details of the vehicle in the R.C. Book and the permitted laden weight to carry the goods was endorsed as 24000 kgs. and tax assessment was made on 7.2.1985 as Rs.2200/- in the R.C.Book. The petitioner has further stated that there was no tax arrears and on 7.10.1996, in the impugned order in Memo R.No.27084/A4 /90, the respondent directed the petitioner to pay the difference tax to the tune of Rs.22,500/- for the period from 01.10.1985 to 31.03.1 9 90 based on the report of the Accountant General, Madras. The petitioner has challenged the impugned order as not legally sustainable on the ground that the demand is made after the expiry of the period of five years to which the tax relates and neither prior notice was issued nor enquiry was conducted before the demand is made and there is violation of Section 15-A of the Tamil Nadu Motor Vehicles Taxation Act.
3. The respondent in his counter has stated that as per the

Registration Certificate of the vehicle belonging to the petitioner, the registered laden weight was 26400 kgs. and the permitted laden weight of the vehicle as per the permit was 24000 kgs. and the tax was assessed based on the permit laden weight of 24000 kgs. instead of registered laden weight of 26400 kgs. It is further stated by the respondent that the Accountant General, during the audit period of 19 89-90, raised an objection that the tax was not collected on the basis of registered laden weight at Rs.2450/- per quarter for the period from 3 1.12.1985 to 31.03.1990 amounting to an arrears of Rs.7,500/- in tax and penalty of 200% amounting to Rs.15,000/- and in total, there is a loss of revenue of Rs.22,500/-. It is further stated in the counter that as per the direction of the Transport Commissioner, dated 19.09 .1996, the difference of tax, as pointed out in the audit, was demanded from the petitioner in the impugned order, dated 07.10.1996.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader.

5. There is no dispute with regard to the facts.
The respondent has demanded a sum of Rs.22,500/- from the petitioner as difference of tax to be paid. The learned counsel for the petitioner contends that as per Section 15-A of the Tamil Nadu Motor Vehicles Taxation Act, recovery of tax, which escaped assessment, ought to have been made within a period of five years to which the tax relates and whereas, in the present case, the demand has been made after the expiry of five years period and hence the demand is not valid in law. Admittedly, the impugned demand had been made by virtue of power vested with the authority under Section 15-A of the Act. Section 15 -A is as follows.
15-A. Recovery of tax which escaped assessment.-- Where for any reason, the whole or any portion of the tax which would have been payable in respect of any motor vehicle under this Act for any period has not been paid, the licensing officer may, at any time, within a period of five years from the expiry of the period to which the tax relates and after issuing a notice to the registered owner or the person having the possession or control of the motor vehicle and making such inquiry as he may consider necessary, direct such owner or other person to pay the whole or any portion of such tax, which has not been paid.
Provided that in computing the period of five years for the purposes of this section, the period or periods, if any, during which the collection of such tax has been stayed by an order of any court shall be excluded."

6. Under the above provision, the licensing officer, at any time within a period of five years from the expiry of the period to which the tax relates, may issue a notice to the registered owner and make such enquiry and then direct the owner to pay tax which has not been paid. In the impugned order, dated 07.10.1996, the respondent has issued the demand to pay the difference of tax amount of Rs.22,500/- for the period from 01.10.1985 to 31.03.1990. Though the petitioner has specifically averred that the above demand, having made after a period of five years, is contrary to Section 15-A of the Act and not valid, the respondent in the counter has not stated as to how the demand is sustainable in law. In short, this contention of the petitioner has not been met by the respondent. The only mode by which

recovery of tax which escaped assessment can be made is by following the mandatory provisions prescribed under Section 15-A of the Act and it stipulates that demand must be made within a period of five years from the expiry of the period to which the tax relates. Admittedly, in the present case, the demand has been made beyond the period of five years and it is not legally sustainable.

7. The other contention raised by the learned counsel for the petitioner is that no prior notice as stipulated under Section 15-A of the Act was issued to the petitioner and no enquiry as contemplated therein was conducted by the respondent before making the demand and hence the demand is not valid in law. The counter affidavit filed by the respondent is silent on this aspect. The respondent neither issued notice nor considered the necessity for making any enquiry before issuing the demand and the mandatory provision under Section 15-A of the Act has not been followed and the demand is not valid in law.

8. In the result, the writ petition is allowed as prayed for.
No costs.

Index:yes.
Internet:yes.
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To:

The Regional Transport Officer,
Virudhunagar.